

REMARKS

This paper and accompanying Request for Continued Examination are submitted in response to the final Office Action mailed on April 4, 2005 having a shortened statutory response period ending on July 4, 2005. This paper is timely filed as July 4, 2005 was a Monday. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Claims 7-8, 10-12, 14-18, 23 and 25-29 are pending in this application. Claims 1-6, 9, 13 and 19-22 have been cancelled previously. New claims 25-29 have been added. Claims 7-8 and 10-12 were rejected under 35 U.S.C. §112, first paragraph, as the term “ingested principally through the gastrointestinal region of the individual” was alleged to be not supported by the specification. Claims 7-8 and 10-12 were rejected under 35 U.S.C. §112, second paragraph, as the term “the chewing gum including less than the typical amount of stimulant that is swallowed by the individual to achieve the effect” was alleged to be indefinite. The aforementioned terms have been removed from the claims without narrowing the scope of the claims or adding new subject matter to the claims. Applicants therefore respectfully request that the §112 rejections be withdrawn.

Claims 7-8, 10-12, 14-18, 23 and 25 were rejected under 35 U.S.C. §102(e) for allegedly being anticipated by U.S. Patent No. 6,586,023 to Song et al. (*Song*). Claims 7-8, 10-12, 14-18, 23 and 25 were rejected under 35 U.S.C. §103(a) for allegedly being obvious in view of International Publication No. WO 98/23165 to Gudas et al. (*Gudas*).

Song and *Gudas* each teach away from a method of reducing the amount of stimulant necessary to deliver an effective amount of stimulant that includes providing the stimulant in a form that can be adsorbed through the oral mucosa as recited in claim 7. *Song* discloses a chewing gum that contains encapsulated caffeine (*i.e.*, a stimulant). The caffeine is encapsulated to shield the bitter taste of the caffeine from the user’s mouth and deliver the caffeine to the chewer’s digestive tract. *Song*, col. 4 lines 40-48. Indeed, *Song* further discloses that by encapsulating caffeine it is possible to incorporate greater amounts of caffeine in chewing gum. *Song*, col. 2 lines 36-49, col. 4 lines 54-59 (“encapsulated caffeine …allows for significantly higher levels of caffeine to be provided in a given gum piece....” [emphasis added]). As the encapsulated caffeine in the *Song* chewing gum 1) shields bitter tasting caffeine from the

chewer's mouth, 2) delivers the caffeine to the chewer's digestive tract, and 3) permits larger amounts of caffeine to be incorporated into chewing gum, *Song* clearly teaches away from a method of reducing the amount of stimulant in a chewing gum containing a stimulant in a form adsorbable through the oral mucosa as recited in claim 7.

Gudas also teaches away from a stimulant in a form adsorbable through the oral mucosa as recited in claims 7 and 14. Similar to *Song*, *Gudas* discloses a chewing gum that contains physically modified caffeine—encapsulated caffeine in particular—that masks bitter tasting caffeine from the chewer's mouth. *Gudas*, page 3 lines 10-16, page 4 lines 20-38, p. 5 lines 1-4. In view of *Song*, the skilled artisan would readily recognize that *Gudas*' encapsulated caffeine masks bitter tasting caffeine from the chewer's mouth and delivers the caffeine to the chewer's digestive tract. Thus, *Gudas*' physically modified caffeine teaches away from a stimulant in a form adsorbable through the oral mucosa as recited in claims 7 and 14.

As *Song* and *Gudas* teach away from agents adsorbable through the oral mucosa, *Song* and *Gudas* fail to teach or suggest the creation of a caffeine saliva content from about 15 ppm to about 440 ppm as recited in claims 11 and 14. Moreover, *Song* and/or *Gudas* have no disclosure remotely related to a method of increasing the stimulatory effect of caffeine that includes enterally ingesting caffeine and also chewing caffeine-containing gum to force caffeine through the oral mucosa as recited in claim 23.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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